THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P.No.24236 of 2002

Dated:25-07-2007

Between:-

K. Rangaiah

..Petitioner

And

The Recovery Officer,
The A.P. Co-operation Housing Society Federation Limited,
Baghlingampally, Hyderabad and two others.

..Respondents.

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

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:O R D E R:

This writ petition is filed for a writ of Mandamus to direct the respondents to refer the dispute vide case No. 24/95 dated 12-10-1995 of the third respondent to the Registrar as per the provisions of the Co-operative Societies Act, 1964 (for short 'the Act').

Heard Sri K. Anantha Rao, learned counsel for the petitioner. None appeared for the respondents.

The petitioner obtained loan from the second respondent and as part of the loan amount was evidently not repaid, a notice dated 26-11-2002 was issued by the first respondent. The petitioner approached this Court by way of the present writ petition with the aforementioned relief.

On behalf of the first respondent Sri K. Davidson filed a counter affidavit wherein it is stated that the petitioner was paid the loan in three instalments totalling to Rs.45,000-00 in the year 1985 and that the petitioner repaid a sum of Rs.40,609-40 paise from 29-02-1988 to 01-03-1995 and that since the petitioner failed to pay the outstanding loan amount of Rs. 1,84,428-07 paise which includes principal amount, interest, penal interest and instalment premium etc., the impugned notice was given. It is also averred in the counter affidavit that if the petitioner disputes the correctness of the notice impugned, a remedy under Section 61 of the Act is available to him wherein he can raise a dispute to the Registrar and therefore the filing of the writ petition is wholly misconceived.

Section 61 of the Act reads as under:

61. Disputes which may be referred to the Registrar:---

(1) Notwithstanding anything in any law for the time being in force, if any dispute touching the constitution, management or the business of a society, other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society, arises---

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society; or

(c) between the society or its committee, and any past committee, any officer, agent or employee, or any past officer, past agent, or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent or deceased employee of the society; or

(d) between the society and any other society,

such dispute shall be referred to the Registrar for decision.

Explanation:--- For the purposes of this sub-section a dispute shall include---

(i) a claim by a society for any debt or other amount due to it from a member, past member, the nominee, heir or legal representative of a deceased member, whether such debt or other amount be admitted or not;

(ii) a claim by surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or other amount due to it from the principal debtor as a result of the default of the principal debtor whether such debt or other amount due to be admitted or not;

(iii) a claim by a society against a member, past member, or the nominee, heir or legal representative of a deceased member for the delivery of possession to the society of land or other immoveable property resumed by it for breach of the conditions of assignment or allotment of such land or other immovable property;

(2) If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the constitution, management or the business of a society, such question shall be decided by the Registrar.

(3) Every dispute relating to, or in connection with, any election to a committee of a society shall be referred for decision to the Tribunal having jurisdiction over the place where the main office of the society is situated, whose decision thereon shall be final.

(4) Every dispute relating to, or in connection with any election shall be referred under sub-section (3) only after the date of declaration of the result of such election.

A reading of the above re-produced provision shows that if any dispute touching the constitution, management or the business of a Society, other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society, *inter alia* arises between a member and the society, such dispute can be referred to the Registrar. This provision does not bar a person who raised such a dispute to make a request to the Registrar to entertain the same and decide, as rightly contended by the first respondent in his counter affidavit. The petitioner without invoking the remedy available under Section 61 of the Act by requesting the Registrar to entertain and decide the dispute had filed this writ petition.

Therefore, I am of the view that the writ petition is wholly misconceived and is liable to be dismissed. Accordingly, the writ petition is dismissed. It is however made clear that it is open to the petitioner to invoke the provisions of Section 61 of the Act by raising a dispute before the Registrar, who shall decide the same after issuing notice to the parties concerned. No costs.

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C.V.NAGARJUNA REDDY, J

Dated: 25-07-2007.
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